IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 242

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION, A FOREIGN CORPORATION,
Petitioner,

vs.

OLGA ZDANOK, JOHN ZACHARCZYK, MARY A. HACKETT, QUITMAN WILLIAMS AND MARCELLE KREISCHER,
Respondents.

MOTION OF ILLINOIS STATE CHAMBER OF COMMERCE FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

and

BRIEF OF AMICUS CURIAE.

HENRY E. SEYFARTH,
OWEN FAIRWEATHER,
WALTER P. LOOMIS, JR.,
231 S. LaSalle Street,
Chicago 4, Illinois,
Counsel for the Illinois State Chamber of Commerce as Amicus Curiae.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

TABLE OF CONTENTS.

Table of Cases.

STATUTES.

OTHER AUTHORITIES.

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To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the Illinois State Chamber of Commerce and respectfully moves this Court, pursuant to Rule 42, paragraphs 1 and 3, of the Rules of this Court, for leave to file the accompanying brief as *amicus curiae* in support of the petition for writ of certiorari heretofore filed in this case. The attorney for the petitioner herein has consented

to the filing of this brief and a copy of the written consent has been filed with the Clerk of the Court. The consent of the attorney for the respondents was requested but refused.

The Illinois State Chamber of Commerce, an Illinois not-for-profit corporation, is a civic association having among its membership many business firms and corporations operating businesses in Illinois and elsewhere which negotiate and are parties to collective bargaining agreements with various labor unions. Many of such members are multi-plant companies whose employees in different plants are represented by different labor unions.

The Glidden Company, petitioner in this case, is a member of the Illinois State Chamber of Commerce. It owns and operates two plants in Chicago, one of which is a plant of its Durkee Famous Foods Division which formerly operated the plant involved in this case at Elmhurst, Long Island, New York and now operates the plant involved in this case at Bethlehem, Pennsylvania.

The interest in this case of the Illinois State Chamber of Commerce arises from the facts that The Glidden Company is one of its members operating plants in this State and that the principles of law to be established by this case will be applicable to and govern the actions of not only The Glidden Company, but of other member firms and corporations of the Illinois State Chamber of Commerce in their collective bargaining relations with labor unions.

In the instant case, in the District Court and Court of Appeals, the parties treated this case primarily as a breach of contract case to be governed by applicable state law. Petitioner herein did not adequately discuss in its briefs below the question of the controlling application to this case of federal substantive labor law. The petition for writ of certiorari does not adequately discuss this question and

does not adequately set forth the reasons why this Court should issue a writ of certiorari in this case.

Movant believes that an awareness by this Court of the question of application to this case of federal substantive labor law is essential to this Court's proper consideration of the petition for writ of certiorari.

Respectfully submitted,

HENRY E. SEYFARTH,
OWEN FAIRWEATHER,
WALTER P. LOOMIS, JR.,
231 S. LaSalle Street,
Chicago 4, Illinois,
Counsel for the Illinois State Chamber of Commerce as Amicus Curiae.

July 26, 1961.

IN THE

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No. 242

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION, A FOREIGN CORPORATION,

Petitioner,

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Respondents.

BRIEF OF ILLINOIS STATE CHAMBER OF COMMERCE AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Pursuant to the foregoing motion for leave to file, this brief is filed by the Illinois State Chamber of Commerce as *amicus curiae* in support of the petition for writ of certiorari heretofore filed in this case.

INTEREST OF THE AMICUS CURIAE.

The Illinois State Chamber of Commerce, an Illinois not-for-profit corporation, is a state-wide civic association with a membership of almost 18,500 businessmen repre-

senting approximately 7,500 companies in 412 towns and cities throughout Illinois. Many of its members are companies operating plants both in Illinois and in states other than Illinois which negotiate and are parties to collective bargaining agreements with various labor unions. Many of its member companies operating geographically separated plants negotiate and are parties to collective bargaining agreements with different labor unions representing bargaining units of employees at the members' different plants.

The petitioner in this case, The Glidden Company, is a member of the Illinois State Chamber of Commerce and operates two plants in Chicago, one of which is a plant of its Durkee Famous Foods Division, the Division of petitioner involved in this case.

The Illinois State Chamber of Commerce believes that the principles of law finally established by this case will be of major importance to its members in their collective bargaining relationships with labor unions, and to the general economy and the business and labor climates of the State of Illinois. It therefore has an interest in this case in urging that this Court issue a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit.

ARGUMENT.

In this case the collective bargaining agreement between the employer and the labor union representing employees in the bargaining unit at the employer's Elmhurst, New York plant provided for termination of seniority after specified periods of continuous layoff. The Court of Appeals held, 288 F. 2d 99, that by virtue of these provisions Elmhurst plant employees whose employment had been terminated due to permanent closing of that plant for economic and business reasons had acquired "vested" seniority rights which survived termination of the labor agreement out of which they arose and entitled those employees to be employed at a new plant of the employer in Bethlehem, Pennsylvania "with the seniority and reemployment rights which they had acquired at the Elmhurst plant." 288 F. 2d at 103-04.

The preamble of the Elmhurst agreement recited that it was made and entered into by the employer "*for* and on behalf of its plant facilities located at Corona Avenue and 94th Street, Elmhurst, Long Island, New York * * *." 288 F. 2d at 103. (Emphasis added.)

I.

The Decision of the Court of Appeals Raises Important Questions Involving Federal Substantive Labor Law Which Should Be Decided By This Court.

This Court, in *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957), laid to rest the controversy whether section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. § 185(a), authorizes federal courts to

fashion and apply federal substantive labor law in cases brought under that section for breach of collective bargaining agreements between an employer and a labor organization representing employees in an industry affecting commerce. The substantive law to be applied in such suits "is federal law, which the courts must fashion from the policy of our national labor laws." 353 U. S. at 456.

The opinion of the Court in *Lincoln Mills*, per Mr. Justice Douglas, quotes with approval that part of the legislative history of section 301 expressing the intent of the co-author of the Labor Management Relations Act, Representative Hartley, that section 301 contemplates " 'not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances * * *,' " including " 'proceedings * * * brought by * * * interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.' " 335 U. S. at 455-56.

In section 301 suits between employers and unions for breach of contract, federal substantive law must be applied to determine the contractual rights and obligations of employer and union. The outcome of such suits necessarily will affect, and in many cases determine, the rights of employees covered by the contract, with the result that the body of federal substantive law now being fashioned by the federal courts in section 301 suits pursuant to *Lincoln Mills* will reach beyond the employer-union relations and control to varying degrees the employer-employee relations under the contract.[1] The recent decision of this Court

1. In *United Protective Workers* v. *Ford Motor Co.*, 194 F. 2d 997 (7th Cir. 1952), a section 301 suit by a union was joined with an individual's diversity action for a declaratory judgment and damages where the actions were based on the same facts and labor agreement. In the normal section 301 action by an employer against a union for damages caused by breach of a no-strike clause,

in *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593 (1960), a suit under section 301 by a union against an employer to enforce an arbitrator's award, affected and determined in a most direct manner the rights under the collective bargaining agreement of the employees who had been discharged and subsequently ordered reinstated with back pay by the arbitrator.

The case at bar is a diversity of citizenship action by individual employees for breach of a collective bargaining agreement entered into between their employer and their labor union bargaining agent. 288 F. 2d 99, 100. Although individual employees may not sue under section 301 of the Labor Management Relations Act,[2] and although a union may not sue under section 301 to enforce uniquely individual rights of employees,[3] employees may sue for damages in the federal courts in diversity actions for breach of a labor contract, as in the present case,[4] and also may sue in the federal courts for declaratory judgments involving rights under collective bargaining agreements where the requirements for such a suit are present.[5] Thus,

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in which federal substantive law applies, the result may well determine also the contractual propriety of the employer's discharge "for cause" of the union agent for allegedly instigating the strike.

2. *United Protective Workers* v. *Ford Motor Co.*, 194 F. 2d 997, 1000 (7th Cir. 1952); *Schatte* v. *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators*, 182 F. 2d 158 (9th Cir. 1950), *cert. denied*, 340 U. S. 827 (1950).

3. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437 (1955).

4. See also *Local Lodge 2040, International Association of Machinists* v. *Servel, Inc.*, 268 F. 2d 692, 693 (7th Cir. 1959), *cert. denied*, 361 U. S. 884 (1959); *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653, 656 (1953); *Smithey* v. *St. Louis Southwestern Ry. Co.*, 127 F. Supp. 210, 213 (E. D. Ark. 1953), *aff'd.*, 237 F. 2d 637 (8th Cir. 1956).

5. Since individual employees may not sue under section 301, the reference in the legislative history of that section quoted by this Court in *Lincoln Mills*, p. 8 *supra*, to proceedings brought by individual employees under the Declaratory Judgments Act in

the question of what substantive law should be applied in suits by individuals to determine rights and obligations under collective bargaining agreements is of paramount importance, for it is federal substantive law which must be applied in section 301 suits by employers or unions to determine rights under the same agreements.

In this case the trial judge remarked that the parties apparently assumed that the substantive law to be applied was New York law, but that his examination of both New York law and federal law disclosed no differences which might bear upon the controversy. 185 F. Supp. at 442. To this extent the trial judge's opinion may fairly be viewed as holding that under federal substantive law seniority rights do not extend beyond the particular plant referred to in and covered by the collective agreement.

Nowhere does the majority opinion of the Court of Appeals disclose whether state or federal substantive law was relied upon as the source of the conclusion that seniority rights derived from a collective bargaining agreement survive termination of the agreement and are transferable to a new plant in another state so as to give employees terminated at the old plant employment rights at the new plant. Indeed, the majority opinion cites no authority whatever in support of this startling proposition. Instead of pertinent authorities, the majority opinion relies on what it chooses to call "the more rational, not to say humane, construction of the contract," and upon the proposition that it could "see no expense or embarrassment to the defendant" in adopting such a construction. 288 F. 2d at 184.

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order to secure declarations of contractual rights could have referred only to diversity actions. For suits by individuals seeking such declaratory judgments, see *United Protective Workers* v. *Ford Motor Co.*, 194 F. 2d 997 (7th Cir. 1952); *Local Lodge 2040, International Association of Machinists* v. *Servel, Inc.*, 268 F. 2d 692, 693-94 (7th Cir. 1959); *Edwards* v. *Capital Airlines*, 176 F. 2d 755 (D. C. Cir. 1949), *cert. denied*, 338 U. S. 885 (1949).

Chief Judge Lumbard, dissenting, would hold, correctly we believe, that in a case such as this "the contract should be construed in light of federal substantive law pursuant to § 301 of the Labor Management Relations Act, 29 U. S. C. A. § 185." 288 F. 2d at 105. He went on to point out that in his view, under applicable federal substantive law, plaintiffs were entitled to no relief.

The opinions below therefore pose for this Court the questions—the answers to which will have far-reaching importance in the labor field—(1) whether in diversity of citizenship actions by individual employees for damages for breach of a collective bargaining agreement or in appropriate actions by individuals for declaratory judgments, involving interpretation of collective bargaining agreement provisions which also may be the subject of section 301 litigation between employers and unions, federal or state substantive law is to be applied, and (2) if the former, what is that law.

Fraught as these questions may be with implications of encroachment upon the doctrine of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), that in federal diversity cases the law to be applied is the law of the state, this Court's decision in *Lincoln Mills*, 353 U. S. 448, has raised the lid of Pandora's box in this vexing area of enforcement of collective bargaining agreements and requires a definitive pronouncement by this Court of the appropriate law to be applied in cases of this nature.

If uniformity of substantive law governing actions for violation of collective bargaining agreements and the federal fashioning of remedies consonant with the policies of our national labor laws were two of the basic objectives producing this Court's decision in *Lincoln Mills*, then the same objectives demand here that federal substantive law be applied in determining the rights of plaintiffs under

the collective agreement.[6] If this result does not obtain in suits of this nature, development of labor law involving enforcement of rights under collective bargaining agreements in interstate commerce will be plagued by the evils of forum shopping, conflicting interpretations of similar contract provisions depending on whether plaintiffs are individuals suing under state law in federal courts on the basis of diversity or unions suing under section 301, and needless arguments at the bargaining table occasioned by desires to contractually avoid or incorporate a myriad of inconsistent judicial interpretations of contract language.

The desirable goal of a uniform national labor policy, which includes consistent judicial interpretations of individual and collective rights under labor contracts affecting interstate commerce, will be nurtured here only by a decision that federal substantive law governs the rights and obligations of the litigants.

II.

The Question of What Substantive Law Should Apply in Cases of This Nature Is of Sufficient Immediate Importance to Require Determination By This Court.

Vast numbers of collective bargaining agreements in industries affecting commerce contain provisions for retention of seniority for some period of time following layoff.[7] These agreements provide a fertile field for litiga-

6. See Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations: II*, 59 Colum. L. Rev. 269, 272 n. 201 (1959); Wollett and Wellington, *Federalism and Breach of the Labor Agreement*, 7 Stan. L. Rev. 445, 469-70 (1955); Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1337-39 (1954); Note, 71 Harv. L. Rev. 1169, 1171 (1958); Comment, 21 La. L. Rev. 476, 481-82 (1961).

7. Sixty-three percent of 400 agreements analyzed by the Bureau of National Affairs provide for retention of seniority for some period of time following layoff. Bureau of National Affairs, *Basic Patterns in Union Contracts*, 1:1, 75:7 (1961).

tion raising questions similar to those in this case. There already is concrete evidence that the decision of the Court of Appeals in this case is spawning suits by employees and unions challenging the rights of companies engaged in interstate commerce to close down plants for economic and business reasons and move to new locations without transferring the work force *in toto* to the new location.[8]

These cases also will involve prickly questions of the substantive law to be applied in their determination. If this Court does not furnish the guideposts for such litigation, employers, unions, employees, and the lower federal courts will be forced to grope their way blindly through a complex area of labor-management relations. Labor and industrial tranquility, the touchstone of our national labor laws and policies, will hardly be fostered by such conditions.

III.

This Court Should Issue a Writ of Certiorari Because of the Conflict of the Decision of the Court of Appeals Below With Decisions of the Courts of Appeals for the Fifth, Sixth, and Seventh Circuits.

Assuming *arguendo* the applicability of federal substantive law to this case, the decision of the Court of Appeals below that seniority rights survive termination of employment and termination of the collective agreement out of which they arose conflicts with the decisions of other courts of appeals in *System Federation No. 59 of Railway Employees* v. *Louisiana & Ark. Ry.*, 119 F. 2d 509 (5th Cir.

8. See *Oddie* v. *Ross Gear and Tool Co.*, 2 Lab. Rel. Rep. (48 L. R. R. M.) 2586 (E. D. Mich. July 5, 1961), a diversity of citizenship action by individual employees for a declaratory judgment; The Wall Street Journal, July 13, 1961, p. 2, col. 3 (midwest ed.); *id.*, July 17, 1961, p. 5, col. 4 (midwest ed.); *id.*, July 21, 1961, p. 1, col. 6 (midwest ed.).

1941), *cert. denied,* 314 U. S. 656; *Elder* v. *New York Central R. R.,* 152 F. 2d 361 (6th Cir. 1945); and *Local Lodge 2040, International Association of Machinists* v. *Servel, Inc.,* 268 F. 2d 692 (7th Cir. 1959), *cert. denied,* 361 U. S. 884.

In *System Federation* seniority rights of employees arising out of a collective bargaining agreement were held not to survive termination of that agreement. "Collective bargaining agreements," said the Fifth Circuit, "do not create a permanent status, give an indefinite tenure, or extend rights created and arising under the contract, beyond its life, when it has been terminated in accordance with its provisions." 119 F. 2d at 515.

The Sixth Circuit held in the *Elder* case that seniority rights did not survive termination or modification of the collective bargaining agreement which had created them, relying on the holding of the Fifth Circuit in the *System Federation* case. 152 F. 2d at 364-65.

The most recent court of appeals decision on this point is that of the Seventh Circuit in the *Servel* case, wherein that Court held that seniority rights did not survive termination of employment resulting from a company's discontinuance of operations. 268 F. 2d at 698.

The holdings of the Fifth, Sixth and Seventh Circuit Courts of Appeals in the cited cases reflect the nearly universal view of the nature of seniority rights under collective bargaining agreements and should be adopted by this Court as the controlling federal substantive law.

CONCLUSION.

The petition for a writ of certiorari should be granted in this case for the reasons stated.

Respectfully submitted,

HENRY E. SEYFARTH,
OWEN FAIRWEATHER,
WALTER P. LOOMIS, JR.,
231 S. LaSalle Street,
Chicago 4, Illinois,
Counsel for the Illinois State Chamber of Commerce as Amicus Curiae.

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